

§ 4044.3

29 CFR Ch. XL (7–1–11 Edition)

highest year. This is also known as the “insurance age.”

(d) For purposes of §§ 4044.55 through 4044.57:

Monthly benefit means the guaranteed benefit payable by PBGC.

(e) For purposes of §§ 4044.71 through 4044.75:

Lump sum payable in lieu of an annuity means a benefit that is payable in a single installment and is derived from an annuity payable under the plan.

Other lump sum benefit means a benefit in priority category 5 or 6, determined under subpart A of this part, that is payable in a single installment (or substantially so) under the terms of the plan, and that is not derived from an annuity payable under the plan. The benefit may be a severance pay benefit, a death benefit or other single installment benefit.

Qualifying bid means a bid obtained from an insurer in accordance with § 2617.14(b) of this chapter. (See Note at beginning of part 4044.)

[61 FR 34059, July 1, 1996, as amended at 67 FR 16959, Apr. 8, 2002; 74 FR 11035, Mar. 16, 2009]

EFFECTIVE DATE NOTE: At 76 FR 34605, June 14, 2011, § 4044.2 was amended by removing “annuity, basic-type benefit” and adding in its place “annuity, bankruptcy filing date, basic-type benefit” and by removing “nonforfeitable benefit, normal retirement age” and adding in its place “nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age” in paragraph (a); amending the definition of “non-trusted plan” by removing “receives a Notice of Sufficiency from PBGC and” and “in accordance with part 2617 of this chapter. (See Note at the beginning of part 4044.);”; removing the definition of “notice of sufficiency”; and amending the definition of “valuation date” by removing “date of termination” and adding in its place “termination date” in paragraph (b); and removing the definition of “qualifying bid” in paragraph (e). These amendments became effective July 14, 2011.

§ 4044.3 General rule.

(a) *Asset allocation.* Upon the termination of a single-employer plan, the plan administrator shall allocate the plan assets available to pay for benefits under the plan in the manner prescribed by this subpart. Plan assets available to pay for benefits include all plan assets (valued according to § 4044.41(b)) remaining after the sub-

traction of all liabilities, other than liabilities for future benefit payments, paid or payable from plan assets under the provisions of the plan. Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. Except as provided in § 4044.4(b), an irrevocable commitment by an insurer to pay a benefit, which commitment is in effect on the date of the asset allocation, is not considered a plan asset, and a benefit payable under such a commitment is excluded from the allocation process.

(b) *Allocation date.* For plans that close out pursuant to a Notice of Sufficiency under the provisions of subpart C of part 2617 of this chapter, assets shall be allocated as of the date plan assets are to be distributed. For other plans, assets shall be allocated as of the termination date. (See Note at beginning of part 4044.)

EFFECTIVE DATE NOTE: At 76 FR 34605, June 14, 2011, § 4044.3(b) was amended by removing “pursuant to a Notice of Sufficiency under the provisions of subpart C of part 2617 of this chapter” and adding in its place “under § 4041.28 or § 4041.50” and by removing “(See Note at beginning of part 4044.).”. These amendments became effective July 14, 2011.

§ 4044.4 Violations.

(a) *General.* A plan administrator violates ERISA if plan assets are allocated or distributed upon plan termination in a manner other than that prescribed in section 4044 of ERISA and this subpart, except as may be required to prevent disqualification of the plan under the Code and regulations thereunder.

(b) *Distributions in anticipation of termination.* A distribution, transfer, or allocation of assets to a participant or to an insurance company for the benefit of a participant, made in anticipation of plan termination, is considered to be an allocation of plan assets upon termination, and is covered by paragraph (a) of this section. In determining whether a distribution, transfer, or allocation of assets has been made in anticipation of plan termination PBGC will consider all of the facts and circumstances including—

(1) Any change in funding or operation procedures;